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IN THE

Supreme Court of the United States

October Term 1967

No. 891

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor,
Petitioner,

against

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI, TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATUTES:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*:

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Opinions Below

The opinions and orders below are adequately set forth in the Petition.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

1. In a union with over 26,000 members (very few of whom have any contact one with the other as they are employed in hundreds of hotels and clubs located throughout metropolitan New York), is it unreasonable for the membership to adopt, through democratic procedures, an eligibility requirement which guarantees that all candidates for principal office will have had at least a minimum of training and experience in union affairs?

2. Did the District Court err in finding that the application of the candidacy qualification objected to by Petitioner did not affect the outcome of the election where all candidates, disqualified or not, campaigned on behalf of their entire slate, and although the membership had an opportunity to vote for the slate, it was defeated by a 7 to 1 margin?

3. Were alleged violations about which no union member complained or exhausted internal union remedies properly excluded from this case?

Statutes Involved

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter sometimes referred to as the "Act") are set forth in the Petition (App. G).*

Statement

The Petitioner seeks, in this action, to set aside the election of officers held in May of 1965 by Respondent Union on the ground that certain eligibility requirements contained in the Union's By-Laws constituted an unreason-

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* "App." refers to the various appendices annexed to the Petition herein.

able qualification upon the right to stand for office and that the enforcement of those eligibility requirements in the May 1965 election " . . . may have affected the outcome" of that election within the meaning of Section 402(c) of the Act.

The challenged qualifications had been, to all intents and purposes, in force and effect since 1941. Prior to its recent amendment, and at the time of the election in issue, the eligibility requirement read,

> "a. With respect to membership in the Union. In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council."

(In 1951 the Shop Delegates Council was abolished and replaced by the Assembly, and, as a consequence, membership in that body was added as a basis for eligibility.)

Since 1941 there have been many changes in the By-Laws just as there have been many changes in the Union and the hotel industry in which the members of the Union are employed. At all times the changes in the By-Laws were made in an effort to involve more and more of the membership in the activities of the Union. Throughout the years the Union has grown larger and stronger. (As of June 30, 1966, the combined surplus of assets over liabilities of the Union was $2,380,875.38. In addition, the Union, through its representatives, participates in the maintenance and operation of various Welfare, Pension and Medical Funds which have combined assets in excess of $30,000,000.)

The purpose of the qualification was to assure the members (who might very well, owing to the Union's size and the fact that the membership is employed in many shops

located throughout the city, be voting for individuals they do not know) that all candidates for paid office had demonstrated prior interest in the activities of the Union and had the knowledge of Union affairs which would enable them to run an organization responsible for the livelihood of tens of thousands of people and the well-being of a multi-billion-dollar industry.

That membership in the Assembly (or in the former Shop Delegates Council) helps train the delegates for leadership in the Union and to qualify them for office, cannot be questioned. The Assembly is the highest governing body of the Union and it discusses and passes upon all important Union matters (271a).* The Assembly meets at least quarterly and each year must meet for a full day. The general officers, the vice presidents, and the business agents are automatically members of the Assembly (32a-33a). At these meetings, the delegates discuss and vote upon questions related to contract enforcement, negotiations, labor legislation, elections, departmental problems, by-law amendments, financial reports, committee appointments and reports, organizational drives and reorganization of districts, apprenticeship programs, and officer training schools (124a-131a). Nevertheless, attendance at Assembly meetings is only a small part of the activities of Assembly members. Even more important in gaining experience in Union affairs is their participation in the Wage Negotiating Committee, in connection with which they participate in the most important function of any trade union, *i.e.*, the negotiation of wages, hours and working conditions. So, also, their membership on the various committees of the Union keeps them in touch with all of its vital affairs (*ibid.*).

As a consequence, Assembly members are constantly and continuously involved in the activities of the Union and receive a great deal of experience in important Union matters.

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* References followed by "a" refer to plaintiff-appellant's appendix in the Court of Appeals.

Under the By-Law setting forth the qualifications for office, at least 1700 members were eligible to run for the thirty-one offices up for election in May of 1965. There was thus a large pool, all of whom were rank and file, non-paid members of the Union, of approximately fifty-five persons eligible to run for each office.

In April of 1965, nominations were held for the various Union offices.

The ultimately successful Administration Party nominated a full slate of eligible candidates.

The Membership Party (the objecting Union members in this case) nominated 20 candidates, some of whom did not have the necessary qualifications to run for office.

Of those nominated, three sought only to run for Delegate to the International Convention, and, as they possessed the necessary qualifications, their nominations were accepted. Of the remaining seventeen, four were found eligible and ran. (Three of those disqualified for Union office were found qualified and ran for the position of Delegate to the International Convention.) Four were disqualified because they did not have the requisite two-year membership in continuous good standing in the Union, a qualification which Petitioner concedes is a reasonable one.

Of the remaining nominees, nine were ruled ineligible because they did not meet the requirements of the By-Laws in that they had not been members of the Assembly, the Executive Board or the Shop Delegates Council (249a). Of these nine, two appeared on the ballot as candidates for International Delegate (249a).

Thus, in all, seven persons nominated by the Membership Party who were ineligible to run for paid office because they did not meet the qualifications the Secretary alleges were unreasonable, did not appear on the ballot (249a, 275a).

There were certain officers for whom the entire membership voted, the remainder being elected by the membership of each District. The Union-wide positions were President, Secretary-Treasurer, General Organizer, Recording Secretary and the ten Delegates to the International Convention (246a, 247a).

As candidates for the four Union-wide General Offices, the nominees of the Membership Party for President and General Organizer were eligible and ran (246a). (The nominee for President was also declared eligible and ran for International Convention Delegate (247a).)

The Membership Party nominees for the positions of Secretary-Treasurer and Recording Secretary (the other two General Offices), although declared ineligible to run for those positions (the former not having met the eligibility requirement in issue and the latter not having two years' continuous good standing in the Union) were, however, each eligible and ran for the position of Delegate to the International Convention (247a).

Thus, all four nominees of the Membership Party for General Office of the Union were on the ballot and all of the members of the Union had an opportunity to vote for them. After a vigorous campaign, they lost by a vote of approximately 7 to 1.

The candidates on the Administration Party slate ran on Row A, the practice in the Union being (as in New York State elections) to place the incumbent party on the first line of the ballot. The candidates of the Membership Party, running on a single slate as requested by them, appeared on the second line of the ballot, or Row B.

Both the Administration Party and the Membership Party campaigned vigorously throughout the Union (210a-211a, 303a-306a). Each campaigned for votes on a slate basis (210a). Literature was distributed on behalf of both parties (303a-306a). The Membership Party held open

meetings three times a week (210a-304a) and distributed leaflets inviting all members of the Union to

> "COME AND MEET YOUR CANDIDATES AT OUR CAMPAIGN HEADQUARTERS, HOTEL WOODSTOCK, 127 West 43rd Street, New York City, every Monday, Tuesday and Wednesday from 3:00 P.M. to 9:00 P.M.." (304a)

In fact, even through some of the original nominees of the Membership Party had been declared ineligible, they stated, at meetings and in widely distributed literature:

> "We urge you though some of our nominees do not appear on the ballot, to vote Row B all the way because we are running all the way". (306a)

On May 19, 1965 the election was held. Voting machines were used. Petitioner admits that no fraud was involved and that the election was conducted in a democratic fashion in full accordance with the By-Laws of the Union (173a-174a).

11,254 members of the Union voted. This figure represents approximately the same percentage of members voting as in previous Union elections including that of 1951, the most hotly contested election in Local 6 history, in which almost three full slates of candidates ran (241a-242a).

The candidates of the Administration Party for General Office and International Convention Delegate received votes ranging from 8,643 to 9,314. The highest vote received by any candidate of the Membership Party running for any of these offices for which the entire membership was eligible to vote was 1,347. As indicated, the Membership Party—the complainants in this case, were, overall, defeated by a 7 to 1 margin.

Reasons for Denying the Petition

1. The decision of the Court below is clearly correct. By providing that unions be permitted to require "reasonable qualifications uniformly imposed" upon the right to stand for office, Congress expressed its intention to interfere as little as possible in internal union affairs (*Wirtz* v. *Local Unions 410, 410A, 410B and 410C, IUOE;* and *Wirtz* v. *Local 30, IUOE*, 366 F. 2d 438, at p. 442 (2nd Circuit, 1966). Congress recognized that not all members of a union would have the background, knowledge or abilities necessary to qualify for a responsible union position.

A qualification is "reasonable" if it is fit and appropriate to the end in view and rationally relevant to a legitimate regulatory purpose. And the test to be applied in each case is not whether the Secretary of Labor, or even the court, believes that the qualifications imposed by the union are the best, or the wisest, or the most practical, or even the *most* reasonable, but only whether the criteria imposed by the Union upon its members, through the will of those same members, are fit and appropriate to the end in view, i.e., whether they constitute a rational method of achieving a reasonable end, and are therefore "reasonable".

As the Court of Appeals stated (App. A, p. 26):

> "It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision. We do not believe that a proper reading of the statute in the

light of its history can justify the Secretary's finding that the union has violated Section 401 by adopting the contested eligibility requirements."

The candidacy qualifications involved in this case are uniquely appropriate under the circumstances:

> "Membership in the union's Assembly, which under the union by-law is the principal basis for eligibility for positions of greater responsibility, provides an opportunity for meeting with the officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration. Members of the Assembly are also members of district councils and they participate there in the work of the various committees which deal with all aspects of union problems.
>
> We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly." (Court of Appeals Opinion, App. A, p. 25).

As stated by Petitioner, ". . . No direct conflict among circuits has yet arisen on the legality of the type of qualification herein involved." (Petition, p. 9) Indeed, it is submitted that no such conflict is foreseeable, as the question of whether a qualification is reasonable must be determined by each court upon the basis of the particular facts and circumstances of each case.

Moreover, although not required to do so, Respondent Union, prior to the trial of this case, amended the by-law qualification in issue (236a-240a). It is estimated that under the new provision, approximately 16,000 members are now eligible to run for paid office.

2. The decision of the District Court that the alleged violation of Section 401 of the Act did not affect the out-

come of the election was not only clearly correct but does not involve questions warranting review by this Court. Not only is there no conflict between the various circuits, but, as stated by Judge Dimock in his concurring opinion in the Court of Appeals (App. A, p. 30):

> "I accept Judge Wyatt's excellent opinion and content myself with simply saying so *since the subject does not seem to me to have sufficient precedential value* to warrant repetition of what he has said." (emphasis added)

Under the facts of this case, for the District Court to have found otherwise would have been to completely disregard the plain language of Section 402(c)(2) of the Act and the clear intent of Congress.

> "Congress intentionally created a narrow remedy under Title IV of the LMRDA so that interference with union elections and management would be kept at a minimum." (*Wirtz* v. *Local Unions 410, 410A, 410B and 410C, IUOE,* and *Wirtz* v. *Local 30, IUOE,* 366 F. 2d 438 (1966), at p. 442).

At the trial of this action, Petitioner did not adduce an iota of evidence in support of its contention that the allegedly unreasonable qualification "... may have affected the outcome" of the election. Instead, he relied upon the "bootstrap doctrine", that a violation of Section 401 which results in disqualification of candidates in and of itself meets the requirement imposed by Congress in Section 402(c)(2).

In concluding that Petitioner had not met its burden of proof, the District Court considered *inter alia* the following facts:

> (i) All candidates of the Membership Party for principal office appeared on the Union-wide ballot on that Party's slate and were defeated by a 7 to 1 margin.

(ii) All other candidates of the Membership Party were defeated by a like majority.

(iii) The candidates of the Membership Party ran on a single slate and all candidates (disqualified or not) admittedly campaigned actively for that slate.

As stated by the District Court (App. E, p. 64):

> "The opposing candidates established a campaign headquarters and conducted an apparently vigorous campaign, with distribution of leaflets and weekly caucuses and election forums."

Despite the foregoing, the Membership Party candidates were overwhelmingly defeated and the District Court properly found that Petitioner had not met the burden of proof required of him:

> "Consideration has been given not merely to the effect of the by-law on those disqualified but to its possible effect in discouraging others from coming forward as opposing candidates. Nonetheless the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-law could not have affected the outcome of the election." (App. E, pp. 64-65)

Thus, the Court concluded:

> "The evidence satisfies me that the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management. The platform of the opposition Membership Party did not charge any abuses or misconduct or even any inefficiency; there was no attempt to state any specific complaints; there was no dramatic or important issue to rouse the membership against the incumbents. The appeal of the opposition was in substance that it could do the same job better." (App. E, p. 65)

3. The original complaint filed by the Petitioner in this case contained allegations of violations of the Act other than the one tried by the District Court. The Union moved in the District Court to strike those allegations on the ground that they related to matters about which no Union member had exhausted internal Union remedies or complained to the Petitioner. Said motion was granted by Judge McLean (App. D).

At the trial of this action, the Secretary offered to prove that the Department of Labor had, prior to commencing suit, notified Union officials of the alleged additional violations (115a-120a). The trial Court refused the offer of proof, ruling that since internal Union remedies had not been exhausted, the matter was not properly before him (234a-235a).

Petitioner asserts the theory that once a union member exhausts internal union remedies and files a complaint with him as to *any* matter, he may investigate and bring suit not only upon the matter which was the subject of internal exhaustion and the complaint filed with him, but upon any alleged violation unearthed in the course of his investigation and of which he has informed the union involved.

This interpretation of the statute is not borne out by the legislative history and has been uniformly rejected by the courts.

The legislative history and the language of the statute is so clear, that we content ourselves by making reference to the decision of the courts below and the cases cited therein.

There is no conflict between the circuits with regard to this question and manifestly it does not involve a question of law requiring decision by this Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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